

Ethics as Self-Transcendence: Legal Education, Faith, and an Ethos of Justice

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Lord, if I argued my case with you, you would prove to be right.
Yet I must question you about matters of justice. Why are wicked
men so prosperous? Why do dishonest men succeed?

*Jeremiah 12:1*¹

CALLICLES: If you are serious and what you say is true, we shall
have human life turned completely upside down; we are doing, ap-
parently, the complete opposite of what we ought.

PLATO, GORGIAS²

I. INTRODUCTION

This conference concerns “pluralism, religion, and the law,” and within that overarching theme members of this panel have been asked to speak on some aspect of “ethics, professionalism, and the practice of law.” I want to use this opportunity to reflect on an aspect of ethics that is at once basic, far-reaching, and deeply neglected: ethics considered precisely as the theory and practice of self-transcendence.

Ethics as self-transcendence is basic because it underlies all the various branches of ethics. It is far-reaching because it has implications not only for personal ethics but also for professional ethics and, indeed, for the very conditions of legal practice. It is neglected because legal academics generally lack any serious background or training in philosophy. As a result, the legal-academic discussion of legal ethics tends to mistake what is obvious in ethics for what ethics obviously is. It tends to think

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1. For an exquisite treatment of this passage and its broader context, see RON HANSEN, *Affliction and Grace: Religious Experience in the Poetry of Gerard Manley Hopkins*, in *A STAY AGAINST CONFUSION: ESSAYS ON FAITH AND FICTION* 115, 115–34 (HarperCollins 2001), especially pages 130–34. See also *infra* note 11 and the context intimated there.

2. PLATO, GORGIAS *481 (Walter Hamilton trans., Penguin Books 1960).

that the essence of ethics is some form of formalism, that is, some judicious combination of easily apprehended concepts and readily enforceable rules. While such formalism may represent the external form of some varieties of ethics, it is hardly the inner core of ethics, and it is hardly the best vehicle for professional formation or for fostering a commitment to justice.

My thesis, then, is simple and, I trust, audacious. Ethics is fundamentally about *ethos*, attitude, one's grounded stance or existential orientation, not the extrinsicism of concepts or the formalism of rules. Ethics concerns not just any orientation, but that intimate and demanding form of personal development manifested in the experience and practice of self-transcendence. Conversely, the neglect of ethics as self-transcendence introduces deep distortions into the way we socialize students into notions of ethics and professionalism. It introduces subsequent distortions into the conditions of legal practice. It encourages a superficial and extrinsic minimalism. It encourages, in effect, the disastrous conception of legal ethics as ethical legalism.

The sources of these distortions are complex, and I cannot hope to explore them fully here. But I hope to explore, briefly and suggestively, the notion of ethics as self-transcendence and its relation to the spontaneous human quest for happiness, to religious faith, and to fostering an ethos of justice. I begin by considering the role of what I take to be the standard model of legal pedagogy in engendering and perpetuating certain distortions concerning objectivity, value, and the good. I then describe and explore a basic, non-minimalist, and non-formalist notion of ethics centering on the notions of orientation, self-transcendence, and self-constitution; such a view of ethics might serve as a counterpoise to some of the defective notions implicit in the standard model of legal pedagogy. Next, I describe a heuristic model of four levels of happiness, which adds dialectical nuances to the basic account of ethics. I conclude with some brief reflections on the role of faith in promoting an ethos of justice.

II. LEGAL PEDAGOGY AND A CRISIS OF THE PROFESSION?

I want to speak first about a tension within the standard model of legal pedagogy. In important ways, legal education operates at cross-purposes with itself. On the one hand, it likes to think of itself as a sublime embodiment of critical and skeptical rationality, heir to Socrates himself and his spirit of restless and probing inquiry. On the other hand, legal education likes to think of itself as an active promoter of important objective values like honesty, integrity, professionalism, perhaps even something called justice. On the one hand, legal education sees itself as

serving an end beyond mere practicality. On the other hand, legal education is relentlessly instrumental. Legal education prides itself on its skepticism, yet it is incompletely skeptical, for it is skeptical of everything but its own skepticism. Legal education prides itself on its civic-mindedness and professionalism, yet it is incompletely civic-minded and professional, for its undifferentiated skepticism leaves its students no grounds for affirming important objective civic and professional values.

I will say more about this apparent schizophrenia in a moment. For now, I simply want to note that it subtly affects or afflicts the ethos of the legal academy and the atmosphere of law school. It impacts our received notions of professionalism, ethics, and their relation to the practice of law. And it even affects our ethos of justice, which is either formed, deformed, or left culpably unformed by the professional womb we call law school. Our notions of professionalism and ethics within the practice of law do not spring into being *ex nihilo*; they are formed (and, I will argue, also partly deformed) when we are socialized and acculturated into the law as law students.

This tension remains generally unnoticed, even in the rest of the academic world. The view from the outside is that, of course, law school is centrally concerned with justice. My colleagues in the philosophy and theology departments at Seattle University are generally amazed when I tell them that law school is not a three-year program of studies about justice. Not ever having been to law school, they quite naturally believe that law is about justice, and so, of course, law school must be a long training in thinking rigorously about the nature and practice of justice. When I tell them that law school is mainly about technical training in matters such as the Uniform Commercial Code, the law of contracts, torts, civil procedure, bankruptcy, land use, administrative law, and so on, they are mildly surprised. When I tell them that “justice” is rarely even mentioned in most law school courses, they are openly incredulous. When I tell them that ethics in the law, taught under the rubric of “Professional Responsibility,” is mainly about learning the minimal rules one needs to observe in order to avoid being disbarred, they are simply stunned. Surely, an ethics curriculum in a discipline such as law, which is so central to our social, cultural, and political systems, might aim higher than merely communicating to students such profound and non-obvious ethical precepts as “thou shalt not sleep with thy clients” and “thou shalt not commingle thy clients’ and thine own checking accounts.”

Professional responsibility courses and precepts are perfectly necessary, of course, but are they sufficient? Does an implicit or explicit ethical minimalism get things upside down? Even if it did, what would

be the alternative? Theoretical ethics is as contested and conflicted a zone as any other area in the modern academy. Is running students through the whole gamut of conflicting opinions in theoretical ethics the only alternative to a rules-based minimalism? The question is an important one. As anyone familiar with the contemporary conditions of legal practice will tell you—and this claim will resonate with you far more if you have practiced law in a large firm within the last ten or fifteen years—“we are doing, apparently, the complete opposite of what we ought.”

Indeed, I sometimes suspect that if my colleagues outside the law school were fully informed on what happens in law school and contemporary legal practice, they might be tempted to exclaim with Henry Adams, when he was reflecting on his education at Harvard, that “the chief wonder of education is that it does not ruin everybody concerned in it, teachers and taught.”³ Whatever the merits of that view, my main point here is that law school pedagogy is not neutral; it is not ‘value free’ in the sense of the term often attributed to Max Weber, and we should stop pretending that it is. How legal education is structured has important implications for what counts as “ethical” in legal practice, and it has enormous implications concerning the survival of the ideal of “professionalism” in the practice of law.⁴ Beyond that, it has implications for the survival of idealism and religious faith as sources of ethical orientation and *praxis* within legal practice.

Despite its aspirations to neutrality and objectivity—or perhaps precisely because of them—law school is a carrier of values, an environmental or professional womb from which emerge the legal world-views of its students. But law school pedagogy is not neutral and it cannot be neutral. It may be “objective,” but only if one naïvely misunderstands objectivity to exclude subjectivity, that is, the actual operations of our minds, the actual aspirations of our spirits (if I may dare to use such a word within the hallowed, or perhaps hollowed, halls of the legal academy).

Whatever else it may also be, law school is the actual formative process through which law students are inducted willy-nilly into the world of meanings and values mediated by legal institutions and legal practice. Whatever else it is, it is not merely neutral or flatly objective in some naïve and undifferentiated sense. There is no such thing as a view-

3. HENRY ADAMS, *THE EDUCATION OF HENRY ADAMS: AN AUTOBIOGRAPHY* 55 (Houghton Mifflin 2000) (1918).

4. See the compact but penetrating suggestions by Fred Lawrence in *Human Voice and Democratic Political Culture: The Crisis of True Professionalism*, 66 TEX. L. REV. 641 (1988).

pointless viewpoint,⁵ much less a viewpointless pedagogy. In short, as G.K. Chesterton once wrote, "every education teaches a philosophy; if not by dogma then by suggestion, by implication, by atmosphere."⁶

Chesterton is speaking about the ethos explicitly or implicitly communicated by any educational system. But what is the specific ethos communicated by law school? What is the philosophy that it teaches by suggestion, by implication, by atmosphere, and perhaps by dogma? And how does that influence the professionalism that permeates (or is absent from) the concrete conditions of legal practice? Is it an ethos of justice, as my colleagues in the philosophy and theology departments always initially assume? Or is it something else, perhaps an ethos of technocratic or instrumental rationality, which by its restricted terms creates and sustains a kind of reflexive skepticism towards substantive goods or values?⁷ Or is its basic ethos some third thing, perhaps an operative ethos which eclectically blends technical proficiency, substantive values such as a respect for rights based on a more or less Lockean or Kantian or pragmatist viewpoint, combined with a basic agnosticism regarding any set of ends or goods which claim to somehow eliminate what seems in fact an ineliminable pluralism concerning the ends or goals or purposes of law?

These questions concern perennially complex and contentious issues. While I do not propose to solve them here, I think some perspective on these issues can be gleaned by noticing two things. First, we all embody or live out of some basic, operative view of the good—a philosophy in the loose sense—and that includes law professors and practitioners.⁸ We choose what we choose for a reason, both individually and collectively, and generally those reasons are embedded in some image or understanding of a larger moral, social, cultural, or religious order.⁹

5. The standard, unconscious response to this statement invites the conclusion that therefore all viewpoints are simply co-planar. But this inference is neither logically required nor empirically plausible. Only if there were no such thing as development within viewpoints or between viewpoints would it follow that all viewpoints are co-planar. And if it were the case that all viewpoints are simply co-planar, then the viewpoint that all viewpoints are co-planar would itself be co-planar with the viewpoint that they are not—that is to say, it would be incoherent or self-refuting.

6. GILBERT K. CHESTERTON, *AS I WAS SAYING: A CHESTERTON READER* 179 (Robert Knille ed., William B. Eerdmans Publ'g Co. 1985).

7. For a now-classic account of this topic, see Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978), especially pages 253–59.

8. See, e.g., Leslie Pickering Francis, *Law and Philosophy: From Skepticism to Value Theory*, 27 LOY. L.A. L. REV. 65, 65 (1993) ("[R]ecognized or not, philosophy is part of the ordinary life of law schools and lawyers. Images of the methods of philosophy shape accounts of legal education and legal reasoning.").

9. For a sophisticated view of this issue, see CHARLES TAYLOR, *MODERN SOCIAL IMAGINARIES* (Duke Univ. Press 2004), especially pages 8–9 ("What an understanding of moral order adds to an awareness and acceptance of norms is an identification of features of the world or

Second, the legal academy is essentially schizophrenic toward questions of the good.¹⁰ On the one hand, we like to talk about professionalism and all the other values with which we imbue our students. On the other hand, the basic stance of the Socratic Method, as traditionally practiced by law professors, often leaves students with nothing more than a kind of residual, undifferentiated skepticism. Students become technically proficient at generating arguments for and against various policy claims or value stances, it is true, but the acquisition of this skill often leaves them stripped of whatever moral common sense they may have possessed when they entered law school.¹¹ Students may retain personal values, but these are essentially privatized, aestheticized, and anaesthetized. After all, everyone knows that “value judgments” are merely subjective.

But what “everyone knows” in this context turns out to be a more or less unexamined story or narrative about the absoluteness of the fact/value dichotomy—less the product of serious or sustained theoretic reflection on the nature of ethics than a watered-down popular version of Hume, or Nietzsche, or Weber.¹² Although there are many reasons to

divine action or human life that make certain norms both right and (up to the point indicated) realizable. In other words, the image of order carries a definition not only of what is right, but of the context in which it makes sense to strive for and hope to realize the right (at least partially).”).

10. See Samuel J. Levine, *Introductory Note: Symposium on Lawyering and Personal Values—Responding to the Problems of Ethical Schizophrenia*, 38 CATH. LAW. 145, 146 (1998).

11. Many law students complain with some frequency that law school makes them feel like they have been gutted of the idealism that brought them to law school, or that it makes them feel that their souls have been stripped from them. I had one bright and idealistic student last year who described law school, rather feelingfully, as “a soul-sucking hell-hole.” Perhaps that is an extreme formulation, but a growing body of literature suggests that my student was onto something. See Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 LAW & SOC. INQUIRY 225, 246 (1986) (noting that data shows law students experience heightened levels of “obsessive-compulsive behavior, interpersonal sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation)”); Susan Daicoff, *Articles Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997); Patrick J. Schlitz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 872–81 (1999); James R. P. Ogloff et al., *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73 (2000); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 114–15 (2002) (referring to a 1990 study by researchers at Johns Hopkins); Angela McCaffrey, *The Healing Presence of Clients in Law School*, 30 WM. MITCHELL L. REV. 87, 95 (2003) (citing an earlier study by Sheldon and Krieger); Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-being*, 22 BEHAV. SCI. & L. 261 (2004).

12. See TAYLOR, *supra* note 9, at 23 (“There are important differences between social imaginary and social theory. I adopt the term imaginary (i) because my focus is on the way ordinary people ‘imagine’ their social surroundings, and this is often not expressed in theoretical terms, but is carried in images, stories, and legends. It is also the case that (ii) theory is often the possession of a

question the received wisdom regarding the fact/value dichotomy,¹³ it is solidly entrenched in the “social imaginary,” as Charles Taylor calls it, which governs legal pedagogy. In a classic passage, Karl Llewellyn suggested to first year students that law school “aims, in the old phrase, to get you ‘thinking like a lawyer.’ The hardest job of the first year is to lop off your common sense, to knock your ethics into temporary anesthesia . . . along with woozy thinking.”¹⁴

At any rate, after launching students on their merry way into practice with this suggestion, implication, atmosphere, or dogma (as Chesterton would say), we then expect them to be fine, upstanding members of the bar: professional, civil, courteous, diligent, honest, and willing to avoid “offensive personalities” and to swear to “never reject, from any consideration personal to myself, the cause of the defenseless or op-

small minority, whereas what is interesting in the social imaginary is that it is shared by large groups of people, if not the whole society. Which leads to a third difference: (iii) the social imaginary is that common understanding that makes possible common practices and a widely shared sense of legitimacy.”).

13. Here again, the literature is vast, but one might start with HILARY PUTNAM, *THE COLLAPSE OF THE FACT/VALUE DICHOTOMY AND OTHER ESSAYS* (Harvard Univ. Press 2002) or the massive and magisterial CHARLES TAYLOR, *A SECULAR AGE* (Harvard Univ. Press 2007). For a critique of the fact/value dichotomy from a Marxist perspective of the primacy of *praxis*, see LOUIS DUPRÉ, *MARX’S SOCIAL CRITIQUE OF CULTURE* 1–14, 58–108, 276–88 (Yale Univ. Press 1985).

The full historical and philosophical genealogy of this syndrome is extremely complex. The problem also goes by the name of “the subject/object split” or “the self/world divide.” HUSTON SMITH, *WHY RELIGION MATTERS: THE FATE OF THE HUMAN SPIRIT IN AN AGE OF DISBELIEF* 256–57 (HarperCollins 2001). See also MARTIN HEIDEGGER, *BEING AND TIME* 363 (John Macquarrie & Edward Robinson trans., Blackwell Publ’g 1978) (1927) (critiquing the notion of beginning from “a worldless ‘I’ in order to provide this ‘I’ with an Object”); *id.* at 254 (critiquing the fact that “Descartes, on the contrary, says that *cogitationes* are present-at-hand, and that in these an *ego* is present-at-hand too as a worldless *res cogitans*”). Human being-in-the-world is moral and religious from the start. See, e.g., ROBERT COLES, *THE SPIRITUAL LIFE OF CHILDREN* (Houghton Mifflin 1990); ROBERT COLES, *THE MORAL INTELLIGENCE OF CHILDREN* (Random House 1997).

Still, progress in understanding these issues does not necessarily depend on successfully ingesting large amounts of arcane philosophical theory. Consider, for example, Richard Mitchell’s penetrating and bracing satire in RICHARD MITCHELL, *THE LEANING TOWER OF BABEL AND OTHER AFFRONTS BY THE UNDERGROUND GRAMMARIAN* 128 (Little, Brown 1984) (“But philosophy does count, even in the most practical matters, *especially* in the most practical matters. All we have to do to make people ignorant and gullible is persuade them into a silly epistemology.”).

14. KARL LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 39 (Oceana Publ’ns 1960) (1930). I think Llewellyn’s point is fairly obvious: Effective law school pedagogy requires at a minimum a re-tutoring of the “common sense” with which students enter law school. Very few people would deny that to become effective practitioners, law students must somehow learn to think dialectically about their own assumptions, in roughly the manner in which the unfortunate interlocutors in the Socratic dialogues had to learn to re-think the assumptions they happened to have brought to the dialogue. But I see little sustained reflection in the legal professoriate on how such a delicate surgery is best accomplished. Mainly, law professors tend to think that the version of the Socratic Method modeled by their own professors in law school suffices. Yet the simple expedient of administering a dose of ethical “anesthesia” without the appropriately skillful surgical operation somehow seems less than fully adequate.

pressed.”¹⁵ Yet we are somehow surprised when the process of knocking students’ “ethics into temporary anesthesia” turns out to be not so temporary.

I may appear to be laying a great deal of blame at the door of the legal academy, when in fact the legal academy largely just reflects the unconscious philosophical and cultural assumptions of our time, our general “climate of opinion,”¹⁶ our “social imaginary.” Still, if the fact/value dichotomy has settled into our shared image of moral or cultural or social order, that fact and its questionable value surely have implications for how we envision the ethical landscape involved in the practice of law.

This is an ancient, oft-rehearsed complaint, one around which a vast literature has accreted, and one that has been around in one way or another since the time of Plato.¹⁷ Yet any attempt to speak about ethics in a legal practice context must take this pedagogical dimension into account. What is desperately needed in legal pedagogy, I would say, is some notion of the possibility of fulfillment and flourishing within the practice of the profession. Put differently, what is needed is some possibility of, and intimation of, an ethos of professionalism, an ethos of justice, an ethos of service, which is not from the start misdirected by a merely instrumental understanding of the role and function of the craft of lawyering and which is not burdened and blinkered by a shrunken sense of what law is and what lawyers strive for in practicing law.

III. A BASIC NOTION OF ETHICS

So far I have suggested that legal education and legal practice appear to suffer from something like an ethics deficit or, at least, that they labor under some key unexamined assumptions concerning the very nature of ethics. I have also suggested that the deficit and the assumptions adversely affect the ethos of the profession and that any renewed sense of fulfillment and flourishing within the practice of law may depend on a

15. WASH. ST. ADMISSION TO PRAC. R. 5(e) (oath of admission to the Washington State Bar).

16. The phrase was made famous by Whitehead. See ALFRED NORTH WHITEHEAD, *SCIENCE AND THE MODERN WORLD* 3 (1925). See also CARL LOTUS BECKER, *THE HEAVENLY CITY OF THE EIGHTEENTH CENTURY PHILOSOPHERS* (Yale Univ. Press 1932), especially chapter one.

17. See PLATO, *supra* note 2. Note that while the dialogue appears to be about the nature of “oratory” or “rhetoric,” it is (in part) really about the defective educational schemes and orientations of the ancient Greek professionals who aimed to help their students acquire “the ability to convince by means of speech a jury in a court of justice,” *id.* at *452, and the ability “to produce the kind of conviction needed in courts of law,” *id.* at *454, and it concerns the proper or improper “use of oratory, like people in the law courts,” *id.* at *471. An adequate reading of the *Gorgias* requires one to read it as a Greek drama, not just a source for conceptual or logical contents. See also James Boyd White, *The Ethics of Argument: Plato’s Gorgias and the Modern Lawyer*, 50 U. CHI. L. REV. 849, 872 (1983) (“Indeed, if what Socrates says about ancient rhetoric and its practitioners is true, how can it not be equally true of modern law and modern lawyers?”).

broadest and deeper notion of ethics than the one normally and tacitly assumed in legal education. Now let me briefly sketch the rudiments that I believe comprise such a broader and deeper notion.

What is ethics about? In its most compact and basic form, ethics is about three things. First, it is about the deep human longing for what one can only call orientation. This longing is “deeper and more fundamental than sexuality, deeper than the craving for social power, deeper even than the desire for possessions”; it is a “more generalized and universal craving in the human makeup. It is the craving for knowledge of the right direction—for orientation.”¹⁸

Second, ethics is about self-transcendence or, as the philosopher Iris Murdoch once phrased it, ethics is about overcoming “the fat relentless ego.”¹⁹ This is a more formidable task than one might think, one which the “high world religions” have struggled to convey to their followers for centuries.²⁰ If Murdoch is even approximately right, then it is not difficult to see a connection between ethics and religious faith. As she notes,

Moral philosophy is properly, and in the past sometimes has been, the discussion of this ego and of the techniques (if any) for its defeat. In this respect moral philosophy has shared some aims with religion. To say this is of course also to deny that moral philosophy should aim at being neutral.²¹

Third, ethics is centrally about the fact that humans constitute themselves by their deliberations, decisions, and actions. We are in the habit of saying that we “made a decision,” but it is more accurate to say that our decisions make us. By choosing various objects or courses of action, we cumulatively constitute ourselves as genuine or fraudulent, authentic or inauthentic, human beings.²²

18. SMITH, *supra* note 13, at 26 (quoting psychologist William Sheldon). See also the comment by the Jesuit philosopher and theologian Bernard Lonergan: “[M]an’s deepest need and most prized possession is authenticity.” BERNARD LONERGAN, *METHOD IN THEOLOGY* 254 (The Seabury Press 1979) (1972).

19. Iris Murdoch, *On ‘God’ and ‘Good,’* in *REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY* 68, 72 (Stanley Hauerwas & Alasdair MacIntyre eds., Univ. of Notre Dame Press 1983) (“In the moral life the enemy is the fat relentless ego.”).

20. See Friederich Heiler, *The History of Religions as a Preparation for the Co-operation of Religions*, in *THE HISTORY OF RELIGIONS: ESSAYS IN METHODOLOGY* 142, 143–44 (Mircea Eliade & Joseph M. Kitagawa eds., Univ. of Chicago Press 1959); see generally SMITH, *supra* note 13.

21. Murdoch, *supra* note 19, at 72–73.

22. Note that I did not use the pair, “successful or unsuccessful.” An adequate critique of the consumerist ideology implicit in the standard notion (or “social imaginary”) of “success” in American culture would perhaps require the interdisciplinary talents of Charles Taylor. For a start, though, see MARTHA BANTA, *FAILURE AND SUCCESS IN AMERICA: A LITERARY DEBATE* (Princeton Univ. Press 1978); WILLIAM LEACH, *LAND OF DESIRE: MERCHANTS, POWER, AND THE RISE OF A NEW*

Notice that, if these three notions are as fundamental as I suggest, ethics is not primarily concerned with concepts or with rules. Instead, it is primarily concerned with the proper negotiation of a basic tension within human consciousness that is lived but not necessarily explicitly or focally noticed. As beings capable of and called to self-transcendence, we are in permanent tension, precariously poised between the selves that we are and the selves that we could or should be. As Aristotle observed, most humans will what is noble, but choose what is advantageous.²³ Or as Bernard Lonergan notes, "self-transcendence involves tension between the self as transcending and the self as transcended. So human authenticity is never some pure and serene and secure possession. It is ever a withdrawal from unauthenticity, and every successful withdrawal only brings to light the need for still further withdrawals."²⁴

An approach to ethics centered on the three fundamental notions I described improves on the standard model or paradigm of ethics by highlighting a number of important features of ethical understanding and practice. First, this approach to ethics is practical. One need not solve all the protean theoretic quandaries of ethics, historicity, pluralism, relativism, anti-relativism, foundationalism, or anti-foundationalism in order to make progress as an ethical human being any more than one need know the physics of acceleration in order to drive faster on the freeway. One need not know the fine points of the theory of subatomic particles in order to avoid driving into macroscopic objects like telephone poles. And one need not solve all the *aporia* of theoretical ethics in order to make proximate and genuine progress in living a good or choiceworthy life.

Second, ethics primarily concerns one's orientation in life. The basic unit of ethics is not the concept, the rule, or the dilemma; rather, it is us and what we make of us. Not only do we cumulatively constitute ourselves, but each choice or decision we make shifts the probabilities of future choices or decisions—not only for ourselves, but also for the institutions within which we work and live.²⁵

AMERICAN CULTURE (Pantheon Books 1993); T.J. JACKSON LEAR, NO PLACE OF GRACE: ANTIMODERNISM AND THE TRANSFORMATION OF AMERICAN CULTURE 1880–1920 (Univ. of Chicago Press 1994), especially pages 97–140.

23. ARISTOTLE, NICOMACHEAN ETHICS *1162b35 (David Ross, J. L. Ackrill & J. O. Urmson eds., 1998).

24. See LONERGAN, *supra* note 18, at 110.

25. See ARISTOTLE, *supra* note 23, at *1114b30–1115a3 ("[W]e are in control of our actions from beginning to end, insofar as we know the particular circumstances surrounding them. But we control only the beginning of our characteristics: the particular steps in their development are imperceptible . . ."); 1 BERNARD LONERGAN, COLLECTED WORKS OF BERNARD LONERGAN, GRACE AND FREEDOM: OPERATIVE GRACE IN THE THOUGHT OF ST. THOMAS AQUINAS 55 (Univ. of Toronto Press 1988) ("The human will does not swing back to a perfect equilibrium of indifference with

Third, while this way of conceiving ethics leaves room for religiously based self-transcendence, faith is not a magic wand. Like anything good, faith can be prostituted, domesticated, distorted, or turned into something evil. For though religious faith can produce extraordinary flowerings of human excellence, such as Francis of Assisi, Teresa of Avila, Dorothy Day, Gandhi, Martin Luther King, the Dalai Lama, it can also serve as a vehicle by which “the fat relentless ego” confuses itself with God in a condition traditionally known as spiritual pride and traditionally regarded as one of the greatest evils. Historical and contemporary instances of “the many traps of religious aberration”²⁶ are sufficiently familiar, I think, to allow me to dispense with a bill of particulars.²⁷

Fourth, unless one is a rationalist individualist, the project of becoming ethical is not an isolated, atomistic process.²⁸ We do not reflect on ethics as though we were Robinson Crusoe stranded on some desert island of the moral world. To the contrary, ethical reflection is inevitably

every tick of the clock; its past operations determine its present orientation; and though this orientation has not . . . absolute fixity . . . still it is characterized by the relative fixity of psychological continuity.”); Patrick Byrne, *On Taking Responsibility for the Indeterminate Future*, in PHENOMENOLOGY AND THE UNDERSTANDING OF HUMAN DESTINY: CURRENT CONTINENTAL RESEARCHES 228–38 (Stephen Skousgaard ed., Univ. Press of Am. 1981) (“To take responsibility within the real universe, within a universe whose future is indeterminate, we must assume responsibility for the shifts in probabilities which result from our actions.”).

26. See LONERGAN, *supra* note 18, at 110.

27. I would note that religious experience and development, like all human development, is dialectical. See, e.g., BERNARD LONERGAN, *Theology in Its New Context*, in A SECOND COLLECTION 67 (William F. Ryan and Bernard J. Tyrrell eds., Westminster Press 1974) (“[F]or religion is conversion in its preparation, in its occurrence, in its development, in its consequents, and also, alas, in its incompleteness, its failures, its breakdowns, its disintegration.”). I would also note that the stock reductionist assumption that religion is best understood as infantile or neurotic guilt-mongering seems rather empirically at odds with the reality of religiously-inspired human development.

As in other domains, so too in the domain of religion, infantile fears can outlast the time of their inevitability. They can color or pervade or dominate in religious feelings of guilt. But it does not at once follow, and it is not at once to be assumed, that such fears represent religious maturity and not religious retardation. One cannot simply ignore the fact that, as religious people advance in the life of the spirit, fear gives place to love, and the terrors of guilt yield to shame for one’s lack of responsibility and sorrow for one’s lack of love.

17 BERNARD LONERGAN, *Sacralization and Secularization*, in COLLECTED WORKS OF BERNARD LONERGAN, PHILOSOPHICAL AND THEOLOGICAL PAPERS: 1965–1980, at 262–63 (Robert Crocken & Robert Doran eds., Univ. of Toronto Press 2004).

28. On the various forms of individualism, see Patrick Brown, *Overcoming ‘Inhumanly Inept’ Structures: Catholic Social Thought on ‘Subsidiarity’ and the Critique of Bureaucracy, Law, and Culture*, 2 J. CATH. SOC. THOUGHT 413, 416–19 (2005). Rationalist individualism is simply a form of epistemic individualism; its basic presupposition is that the significant locus of human knowing is the individual rather than the community, the group, or the tradition. See *id.*

embedded in a tradition, even if it is only the tradition implicit in the language one speaks.²⁹ As Stanley Hauerwas noted,

the justifications of our moral principles and assertions cannot be done from the point of view of anyone, but rather [require] a tradition of moral wisdom. Such a tradition is not a 'deposit' of unchanging moral 'truth,' but it is made up of the lives of men and women who are constantly testing and changing that tradition through their own struggle to live it.³⁰

Stated otherwise, ethics and becoming ethical are at least partly matters of reasonable belief.

IV. FOUR LEVELS OF HAPPINESS AND A PLURALISM OF ENDS

Let me now flesh out the basic notions of ethics—orientation, self-transcendence, and self-making or self-constituting—by discussing a model that can help us understand the relation of religion, ethics, pluralism, and the law in a way that is both concrete and salutary. The model is a descriptive heuristic. It is not an abstract, necessitarian ethical doctrine, concept, or set of premises. Rather, it forms an instance of what Richard Bernstein has termed “engaged fallibilistic pluralism.”³¹ As Bernstein notes, “Such a pluralistic *ethos* places new responsibilities on each of us. For it means taking our own fallibility seriously—resolving that however much we are committed to our own styles of thinking, we are willing to listen to others without denying or suppressing the other-

29. On tradition as an ineliminable component of ethical reflection, see ALASDAIR C. MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* (Duckworth 1985), especially chapter one (discussing the linguistic dimension of ethical traditions), and ALASDAIR C. MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* (Univ. of Notre Dame Press 1989).

30. Stanley Hauerwas, *On Keeping Theological Ethics Theological*, in *REVISIONS, CHANGING PERSPECTIVES IN MORAL PHILOSOPHY*, *supra* note 19, at 33.

31. RICHARD J. BERNSTEIN, *THE NEW CONSTELLATION: THE ETHICAL-POLITICAL HORIZONS OF MODERNITY/POST-MODERNITY* 336 (MIT Press 1992). The fallibilistic thesis is not entirely new or uniquely post-modern; without glossing over the vast differences in historical context, it is fair to say that both Aristotle and Aquinas (among other philosophers) made similar points. See ARISTOTLE, *NICOMACHEAN ETHICS* *1094b23–28 (Martin Ostwald trans., Bobbs-Merrill Pub. 1962) (a well-oriented person “is one who searches for that degree of precision in each kind of study which the nature of the subject at hand admits: it is obviously just as foolish to accept arguments of probability from a mathematician as to demand strict demonstration from an orator”); THOMAS AQUINAS, *COMMENTARY ON ARISTOTLE’S NICOMACHEAN ETHICS* 18 (C.I. Litzinger trans., Regnery 1964) (“[C]ertitude cannot be found, nor should it be sought, in the same degree in all discussions where we reason about anything. Likewise, the same method is not used in all products made by art; but each workman works with the material in a way suited to that material Now the matter of moral study is of such a nature that perfect certitude is not suitable to it.”); *id.* (“Thus it is evident that moral matters are variable and divergent, not having the same certitude each time.”).

ness of the other.”³² The model has descriptive and dialectical nuances which might allow us to think critically about the plurality of ends for which humans strive, including religious ends, and about the relations between them.

It has to do, in other words, with that rare achievement of self-transcendence, orientation, and self-constituting called self-knowledge. Self-knowledge is not exactly irrelevant to ethics, legal education, or professional practice. Indeed, for a professional formation process, claiming Socrates as the inspiration for its pedagogical method, to lack any component of self-knowledge would be, well, an injustice.

The three basic features of ethics I have been discussing find illustration in a descriptive model articulated in Robert Spitzer’s work on business ethics.³³ It is elegant in its simplicity and fascinating in its implications. Spitzer’s model is simply a skeletal structure of the pluralism of human ends, goals, and purposes. It is verifiable in personal experience and confirmed, in various ways, by the historical traditions of philosophy and by the scriptures of Judaism, Christianity, Islam, Hinduism, Buddhism, and other world religions.³⁴

Essentially, Spitzer contends that humans operate on, and are oriented towards, four distinct but related levels of happiness. Each successive level embodies an increased increment of self-transcendence, an enlargement or deepening of orientation, and a higher stage in the self-constituting inherent in ethical reflection and decision. On a first level, we are spontaneously oriented to the kind of happiness that comes from

32. BERNSTEIN, *supra* note 31, at 336. Again, this notion is not entirely new. See ARISTOTLE, *supra* note 23, at *1134b–1135a; AQUINAS, *supra* note 31, at 18 (“Regarding [virtuous works] there are no agreed opinions, but rather a decided difference is found in what men judge about them. In this matter, a variety of errors occur, for certain actions, considered just and good by some, are looked upon as unjust and bad by others according to different times and places and persons. Now a deed is considered vicious at one time and in one country, but at a different time and in a different country it is not considered to be so.”); AUGUSTINE, *TEACHING CHRISTIANITY* 144 (New City Press 1995) (“All good and true Christians should understand that truth, wherever they may find it, belongs to their God.”).

33. ROBERT J. SPITZER, *THE SPIRIT OF LEADERSHIP: OPTIMIZING CREATIVITY AND CHANGE IN ORGANIZATIONS* 75–124 (Executive Excellence Publ’g 2000).

34. Because it is, broadly speaking, emergentist rather than reductionist, Spitzer’s model is contrary to the philosophy-disguised-as-science known as “scientism” and its corollary reductionism. For a critique of scientism from the point of view of the history of religions, see SMITH, *supra* note 13, especially chapters 1–4 and chapters 8–14. For a rigorous philosophical critique of scientism, see 10 ERIC VOEGELIN, *The Origins of Scientism*, in *COLLECTED WORKS OF ERIC VOEGELIN, PUBLISHED ESSAYS: 1940–1952*, at 168–96 (Ellis Sandoz ed., Univ. of Miss. Press 2000). For a rigorous critique of reductionism, see chapters three and four in 3 BERNARD LONERGAN, *COLLECTED WORKS OF BERNARD LONERGAN, INSIGHT: A STUDY OF HUMAN UNDERSTANDING* (Frederick E. Crowe & Robert M. Doran eds., Univ. of Toronto Press 1992) (discussing the world-view of “emergent probability” as a necessary consequence of the complementarity of classical and statistical heuristic structures in modern science).

immediate gratification. Examples abound, of course, but one can think of basic aesthetic pleasures such as chocolate, lattes, wine, music, poetry, painting, laughter, and other more or less immediate sources of various kinds of pleasure. On a second level, we are spontaneously oriented to the kind of happiness that comes from ego-gratification. Again, examples are many, but one can think of the happiness that comes from personal achievement, successful competition, social recognition, and honor.

On a third level, we are spontaneously oriented to the kind of happiness that comes from contributing to some good beyond oneself. Here one can think of the kind of happiness that comes from being a member of a community, whether it be a friendship, relationship, or marriage; a team, a working group, or a group with specialized skills and aims, such as a scholarly community; or a local, national, or international social or cultural community. Making a contribution to a good beyond oneself involves a distinct form of happiness or experienced fulfillment, different in kind and not essentially reducible to immediate or ego-gratification. Such a contribution involves us in self-transcending affects such as gratitude, friendship,³⁵ and a sense of community or belonging.

On a fourth level, we are spontaneously oriented to the kind of happiness or fulfillment that comes from being involved with something of ultimate significance. According to Spitzer, humans “are not only interested in what is concrete and immediate, they want to be involved in something of ultimate, permanent, absolute, unconditional, and even infinite significance. It is not enough to experience a concrete truth. We would like to have a sense of ultimate Truth.”³⁶ This is the distinctive level of happiness or fulfillment that people of faith associate with living and practicing their faith.³⁷ One can think of these four levels as progressive enlargements of the horizon of the particular individual who experiences them.

This is all simple enough, and volumes more could be, and have been, written about each level. The levels are themselves multi-leveled, and each is less like a simple discrete category and more like an inner

35. One can correlate these levels with various accounts of virtue. The relationship of friendship to ethics and political community, for example, is part of the classical tradition in philosophical and theological ethics. See, e.g., ARISTOTLE, *supra* note 23, at *1155a–1172a (on the relation of friendship to ethics); see also DONALD X. BURT, FRIENDSHIP AND SOCIETY: AN INTRODUCTION TO AUGUSTINE’S PRACTICAL PHILOSOPHY (William B. Eerdmans Publ’g 1999).

36. SPITZER, *supra* note 33, at 81. The most helpful scholarly introductions to the fourth level that I am aware of include the article by Friedrich Heiler, *supra* note 20, and chapter 4 on “Religion” in LONERGAN, *supra* note 18, at 101–24.

37. Chapter 4 on “Religion” in LONERGAN, *supra* note 18, at 101–24, also provides a much more ample, nuanced, and dialectical account of the fourth level. See also PAUL WOODRUFF, REVERENCE: RENEWING A FORGOTTEN VIRTUE (Oxford Univ. Press 2002).

continent. The scheme has many precedents in the history of philosophy, notably Kierkegaard's delineation of three levels of existential subjectivity: the aesthetic, the ethical, and the religious.³⁸ Yet Spitzer's model possesses a descriptive clarity that other models of the different traditions of philosophical ethics can lack.

This clarity gives the model a unique relevance for the problem of pluralism in ethics, for it anchors ethical discernment in the concrete and verifiable experience of the individual person without holding ethics hostage to a superficial relativism or skepticism. It helps the individual identify the normative dynamics of self-transcendence already present within her own experience without simply imposing a doctrinaire set of extrinsic rules or concepts. In other words, the analytic power of Spitzer's model stems from (1) its open-textured minimalism, which is open to a large plurality of concrete and even conflicting understandings, (2) its description of the relation of the levels to one another, and (3) its implications for what Iris Murdoch holds is the subject of ethics, namely, the overcoming or transcendence of the ego. I will discuss each of these advantages in turn.

First, the model does not presuppose any particular scheme of evaluating or valorizing the four levels of happiness as levels. Each level is simply a spontaneous orientation that has to be guided forward by appropriate developments and differentiations. Each is open and thus pluralist; in other words, each is open to all the variant understandings of different cultural or historical traditions. For example, Buddhism, Hinduism, Confucianism, and Islam conceive of the third and fourth levels in different ways,³⁹ and utilitarianism and communitarianism conceive of the third level in different ways.

Second, the descriptive-evaluative component comes from the relations between the levels. According to Spitzer, taken together, the levels are integral. Not only are they levels of happiness to which we are spontaneously oriented, they are levels of personal identity as well. Thus, one has an aesthetic identity, an ego identity, a contributive identity, and an identity based on the degree of one's affective and effective orientation into transcendent mystery. The higher levels incorporate or sublate but do not replace the lower levels. Each level has its own distinctive role or function, and the functioning of the higher levels complements and completes and contextualizes the lower levels. By the same token, if the higher levels are truncated or ignored, the lower levels become distorted

38. See SOREN KIERKEGAARD, *EITHER/OR: A FRAGMENT OF LIFE* (George L. Stengren trans., Steven L. Ross ed., Harper & Row 1986) (1843).

39. See, e.g., WILLIAM THEODORE DE BARY, *ASIAN VALUES AND HUMAN RIGHTS: A CONFUCIAN COMMUNITARIAN PERSPECTIVE* 58–89 (Harvard Univ. Press 1998).

versions of themselves. An orientation to pleasure or ego achievement is one thing in the context of the full spectrum of happiness; it is another thing, however, if the sublimating orientations implicit in the third and fourth levels are ignored or denied.

Thus, if I acknowledge (and therefore live on or out of) only the first two levels, my psychic center will be off-center. For from within this truncated stance, on the psychological level,

I tend to locate my center in myself. I act as if I were the hub of the world and I intend (direct myself) toward all other things and persons from that central place. . . . All others are seen from this vantage point. All others are evaluated from this standard. All others are means to my ends as pragmatic goals of my free subjectivity. . . . All others are enjoyed depending on the value of their qualities to satisfy my needs as an organic and psychological consumer.⁴⁰

Similarly, on the level of affectivity, "my ego-centered *satisfaction* of needs, rather than bringing *happiness*, tends to be greedy and addictive, an indulgence that becomes decadent, repulsive to others, and self-destructive."⁴¹ Moreover, even my intelligence will suffer distortion: "At the level of knowing, my ego-centered *intelligence*, rather than *understanding* others, tends to be arrogant and obsessive, self-righteous in judgments of others and defensive against their calling my ego into question."⁴²

This downwardly-directed dynamic of self-truncation and self-alienation is also illustrated by Spitzer's extended analysis of what he calls "the comparison game,"⁴³ whose spontaneously destructive tendencies occur when one's identity and search for happiness stalls on the second level. In the comparison game, everything one does is centered on whether it enhances his or her comparative advantage or comparative ranking vis-à-vis others. Spitzer devotes an entire chapter to analyzing the pervasive and destructive effects that this has on organizational effectiveness and *esprit de corps*. While I cannot enter into a detailed discussion of that here, I would suggest that his analysis of the comparison game provides a remarkable diagnostic technique for evaluating the pa-

40. GEORGE KUNZ, *THE PARADOX OF POWER AND WEAKNESS: LEVINAS AND AN ALTERNATIVE PARADIGM OF PSYCHOLOGY* 110 (State Univ. of N.Y. Press 1998). Although Kunz is not drawing on Spitzer's model, his account is remarkably consonant with it. As a Levinasian psychologist, Kunz's description of the Gyges Complex, the Zeus Complex, and the Narcissus Complex fits hand-in-glove with Spitzer's description of the pathologies that can occur when the third and fourth levels of happiness/identity get ignored, displaced, or occluded. Similarly, the whole post-modern emphasis on the Other fills out and concretizes what Spitzer means by the third level.

41. *Id.* at 111.

42. *Id.* at 110.

43. SPITZER, *supra* note 33, at 89-123.

thologies that haunt law schools and law firms. In addition, Spitzer's analysis has remarkable affinities with René Girard's notion of "mimetic rivalry."⁴⁴ Girard's analysis identifies envy as a central form of distorted human desire for the good and for happiness, and one simply cannot adequately discuss the central problem of ethics—the "ego and . . . the techniques (if any) for its defeat"⁴⁵—without identifying these dynamics.

This destructive dynamic of the comparison game, then, is precisely what plays itself out for students in law school and lawyers in law firms. When I teach Spitzer's text in my ethics course, law students immediately recognize it as naming and describing with remarkable accuracy one of the things they find most difficult and painful about the law school experience. Similarly, lawyers in practice recognize the comparison game as one of the main pathologies stalking the contemporary practice of law.

Stated otherwise, while Spitzer's model identifies the normative dynamics implicit in the human quest for happiness on each of the four different levels, it also leaves room for diagnosing the biases that may attend each level. An exclusive orientation to the first and second levels can leave a person the victim of a conscious or unconscious egoistic bias which makes the individual self and its interests the manipulative center of everything. Similarly, an orientation to the good beyond oneself can become arrested by the group bias of the relevant community. Finally, the orientation to both the common good and to transcendent faith can be distorted by the biases of the lower levels and may even intensify them.

The levels of happiness can also become captured by cultural biases. The hypertrophic individualism of American culture tends to make the third level seem implausible; the reflexive skepticism of law school culture guts the possibilities of higher orientation offered by both the third and fourth levels; and human living then settles down into a decadent routine of competing egos struggling for status and recognition. The resulting situation in legal practice is not exactly conducive to either professionalism or an ethos of justice. Mainly, it is conducive to making the world of legal practice seem pretty much like Hobbes' description of pre-civil society as "the war of all against all."⁴⁶

44. See, e.g., RENÉ GIRARD, *A THEATER OF ENVY: WILLIAM SHAKESPEARE* (Oxford Univ. Press 1991); see also chapter 3 in EUGENE WEBB, *THE SELF BETWEEN: FROM FREUD TO THE NEW SOCIAL PSYCHOLOGY OF FRANCE* (Univ. of Wash. Press 1993), describing Girard's treatment of "mimetic rivalry."

45. See Murdoch, *On 'God' and 'Good,' supra* note 19, at 72.

46. THOMAS HOBBS, *LEVIATHAN* 100 (Michael Oakeshott ed., Collier 1962) (1651).

V. CONCLUSION

All of this is perhaps simply a way of saying that the ethical and religious horizons of law students should not simply be ignored, anesthetized, or—by implication, atmosphere, or dogma—denied or denigrated by legal education. Legal education should cultivate an ethos of justice and not just technical proficiency in legal mechanics. Nor should we ignore the resources that faith or ethics in the form of orientation, self-transcendence, and self-constituting might offer in the struggle against the deformation of professionalism in the practice of law.⁴⁷ While there are indeed “many traps of religious aberration,”⁴⁸ we cannot simply ignore the fact that developed forms of religious self-transcendence (that is to say, those which are not merely hostage to or captured by the first two levels of happiness) contribute to the possibility of liberation from ego-compulsion and make possible increased contributions to a common good.

In other words, because genuine religious faith has the potential to partially dethrone or displace “the fat relentless ego,” it can inspire sustained self-transcendence in the service of justice; it can work for the betterment of humankind in all sorts of concrete and sustained ways—even in the face of seemingly hopeless odds; and it can help make life in the practice of law something other than a Hobbsean “war of all against all,” or a Girardian nightmare of mimetic rivalry,⁴⁹ or a Sartrean world in which “hell is other lawyers.”⁵⁰ Genuine religious faith opposes warring egoisms, resists the hell of an envy-based and ego-built world. It can contribute to turning life right-side-up again; it can help us to do and to become something other than “the complete opposite of what we ought.”⁵¹

47. See Lawrence, *supra* note 4. See also Debra Cassens Weis, *Narcissists with Big Egos Lead Many Law Firms, Consultant Says*, ABA JOURNAL, Nov. 11, 2008, http://www.abajournal.com/news/narcissists_with_big_egos_lead_many_law_firms_consultant_says/.

48. See LONERGAN, *supra* note 18, at 110.

49. See EUGENE WEBB, *supra* note 44.

50. See JEAN-PAUL SARTRE, NO EXIT 52 (Paul Bowles trans., Samuel French 1958) (1944) (“Hell is just—other people.”).

51. See PLATO, *supra* note 2, at *481. For an extraordinary evocation of the power of faith to mitigate or reverse social evils, see the materials (especially the videos) on the 2008 Opus Prize winners, Marguerite Barankitse, Krishnammal Jagannathan, and Michael Woodard, available at: <http://www.seattleu.edu/opusprize/>.